

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1174 of 1992****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI**

Sd/-

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

4 Whether this case involves a
substantial question of law as to the
interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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STATE OF GUJARAT - Appellant(s)**Versus****DILIPKUMAR GIRDHARLAL KUVERIA - Opponent(s)**

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Appearance :

MS MS PANCHAL APP for Appellant(s) : 1,

MR JITENDRA MALKAN for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 29/11/2007****ORAL JUDGMENT**

1. The present Criminal Appeal is filed by the State of Gujarat under section 378 of Criminal Procedure Code against the impugned judgment and order of

acquittal passed by the Learned Chief Judicial Magistrate, Jamnagar on 19.08.1992 in Sessions Case No.1416/1987, whereby the Learned Trial Judge had acquitted the respondent-accused under Section 248(1) from the charges of the offences punishable under Sections 465, 468, 469 and 471 of Indian Penal Code.

2. The brief facts of the prosecution case are as under;

2.1 At that relevant point of time, the respondent-accused was having degree of Diploma in Mechanical Engineering and, hence, licence was issued to him for plan maker only. However, the respondent-accused after fabricating letterhead of the Jamnagar Mahanagarpalika, created a bugs certificate, Exh.29 and thus, committed an offence under Sections 463, 464, 466, 468, 469, 470 and 471 of the Indian Penal Code.

2.2 On the basis of complaint, the investigation was embarked upon and on conclusion of the investigation, chargesheet was filed against the respondents-accused before the Learned Magistrate Court.

2.3 As the accused denied the charges, the matter proceeded further. The Learned Magistrate has examined as many as 5 witnesses and also placed

reliance upon several documentary evidence.

2.4 At the end of trial, the learned Magistrate acquitted the respondent-accused of the charges levelled against him. Hence, this appeal.

3. Learned Additional Public Prosecutor, Ms.Panchal for the appellant has contended that the trial Court has committed an error in not believing the prosecution witnesses and has wrongly acquitted the accused of the charges levelled against him. She has also contended that the trial court ought to have believed the version of the prosecution witnesses who were present at the relevant point of time.

4. Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

5. In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".

[*Emphasis supplied*]

6. Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh &***

ors. reported in **2007 A.I.R. S.C.W. 5553** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in **2007 A.I.R. S.C.W. 5589**. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

7. In the present case, the trial Court has considered the evidence in details and the reasons for acquittal are assigned in impugned judgment. The trial court given finding that the prosecution has not examined the Investigating Officer, who investigated the matter and though the respondent-accused has fabricated the certificate, Exh.29, the respondent-accused has not taken any benefit from it nor caused damage or loss to any one. Over and above, there are major discrepancies and inconsistencies in the evidence of the prosecution witnesses and thus, the prosecution has failed to prove the case against the respondent-accused. Taking the overall view evidence, oral as well as documentary, the trial Court has acquitted the respondent.

8. In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against him. In my view, the findings recorded by

the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9. It is also required to be noted that in the case of **State of Maharashtra V/s. M/s Gopalprasad Govindprasad Agarwal**, reported in **AIR 1999 SC 1507**, having regard to the fact that the offences were committed almost 20 years ago, the Apex Court refrained from setting aside the acquittal order. In the present case the incident is of 19th December, 1986 and almost 20 years have elapsed. Therefore, even on this ground, I am of the view that it is not desirable to interfere with the findings of the trial court.
10. I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of **State of Karnataka Vs. Hemareddy** reported in **A.I.R. 1981 S.C. 1417** wherein it is held as under:

“... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudhary* (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court

when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

11. In the result, the appeal is dismissed.

Sd/-
(K.S.JHAVERI, J.)

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